

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-7236 AHM (CWx)	Date	October 7, 2009
Title	FARHAD BARAHMAND v. TOYS 'R' US-DELAWARE, INC., et al.		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE
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Stephen Montes

Not Reported

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys **NOT** Present for Plaintiffs:Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

On October 5, 2009, Defendant Toys 'R' Us-Delaware, Inc. ("Toys 'R' Us") removed this action on the basis of diversity jurisdiction under 28 U.S.C. § 1441(a). Plaintiff is a citizen of California. Notice of Removal ¶ 5; Complaint ¶ 3. The Complaint alleges that Defendant Ronald Toczynski is a citizen of California. Complaint ¶ 2. Toys 'R' Us alleges in its Notice of Removal that Mr. Toczynski has not yet been served. Notice of Removal ¶ 3. However, complete diversity of the plaintiff and *all* defendants, including those unserved, is required in order for a case to be removable on diversity grounds. *See Pecherski v. General Motors Corp.*, 636 F.2d 1156, 1160 (8th Cir. 1981); William W. Schwarzer, et al., *California Practice Guide: Federal Civil Procedure Before Trial* (2008) § 2:641.

A federal court must determine its own jurisdiction even if there is no objection to it. *Rains v. Criterion Sys., Inc.*, 80 F.3d 339 (9th Cir. 1996). The removal statute is strictly construed against removal, and the burden of establishing jurisdiction in the federal forum rests on the party invoking the statute — here, Defendant Toys 'R' Us. *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988); *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). Defendant has not alleged the complete diversity necessary to invoke removal jurisdiction.

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Accordingly, Defendant is ORDERED TO SHOW CAUSE in writing by not later than **October 19, 2009** why this action should not be remanded for lack of removal jurisdiction. Failure to respond on or before that date will be construed as consent to remand.

Initials of Preparer

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SMO
